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SENATE BILL 862

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Timothy Z. Jennings

AN ACT

RELATING TO ALCOHOLIC BEVERAGES; PROVIDING FOR RESTAURANT  
LICENSES TO BE ALLOWED IF A LOCAL GOVERNMENT GRANTS A PETITION  
FILED BY AN APPLICANT; PROVIDING FOR SUNDAY PACKAGE SALES TO BE  
ALLOWED IF A LOCAL GOVERNMENT GRANTS A PETITION FILED BY AN  
APPLICANT; AMENDING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 60-6A-4 NMSA 1978 (being Laws 1981,  
Chapter 39, Section 21, as amended) is amended to read:

"60-6A-4. RESTAURANT LICENSE. --

A. Except as provided in Subsection B of this section, at any time after the effective date of the Liquor  
Control Act, a local option district may approve the issuance  
of restaurant licenses for the sale of beer and wine by holding  
an election on that question pursuant to the procedures set out

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1 in Section 60-5A-1 NMSA 1978. The election also may be  
2 initiated by a resolution adopted by the governing body of the  
3 local option district without a petition from registered  
4 qualified electors having been submitted.

5 B. A restaurant license may be issued to a  
6 restaurant in a municipality with a population of over five  
7 thousand persons that has not adopted local option for  
8 restaurant licenses or in a county that has not adopted local  
9 option for restaurant licenses if the governing body grants a  
10 petition from a restaurant that sets forth the restaurant's  
11 position why it should be allowed to apply for a restaurant  
12 license notwithstanding that the municipality or county is not  
13 a local option district for restaurant licenses. If the  
14 governing body grants the petition allowing the right to apply,  
15 a copy of its ordinance, resolution or other pronouncement  
16 evidencing the grant shall be submitted to the director, and  
17 the restaurant may then apply for a restaurant license pursuant  
18 to the provisions of the Liquor Control Act, except for those  
19 provisions pertaining to or requiring local option elections.

20 [~~B.~~] C. After the approval of restaurant licenses  
21 by the registered qualified electors of the local option  
22 district or the granting of a petition filed pursuant to  
23 Subsection B of this section and upon completion of all  
24 requirements in the Liquor Control Act for the issuance of  
25 licenses, a restaurant located or to be located within the

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1 local option district, or within a municipality or county that  
2 has granted a petition pursuant to Subsection B of this  
3 section, may receive a restaurant license to sell, serve or  
4 allow the consumption of beer and wine subject to the following  
5 requirements and restrictions:

6 (1) the applicant shall submit evidence to the  
7 department that ~~[he]~~ the applicant has a current valid food  
8 service establishment permit;

9 (2) the applicant shall satisfy the director  
10 that the primary source of revenue from the operation of the  
11 restaurant will be derived from meals and not from the sale of  
12 beer and wine;

13 (3) the director shall condition renewal upon  
14 a requirement that no less than sixty percent of gross receipts  
15 from the preceding twelve months' operation of the licensed  
16 restaurant was derived from the sale of meals;

17 (4) upon application for renewal, the licensee  
18 shall submit an annual report to the director indicating the  
19 annual gross receipts from the sale of meals and from beer and  
20 wine sales;

21 (5) restaurant licensees shall not sell beer  
22 and wine for consumption off the licensed premises;

23 (6) all sales, services and consumption of  
24 beer and wine authorized by a restaurant license shall cease at  
25 the time meals sales and services cease or at 11:00 p.m. ,

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1 whichever time is earlier;

2 (7) if Sunday sales have been approved in the  
3 local option district, a restaurant licensee may serve beer and  
4 wine on Sundays until the time meals sales and services cease  
5 or 11:00 p.m., whichever time is earlier; and

6 (8) a restaurant license shall not be  
7 transferable from person to person or from one location to  
8 another.

9 [~~C.~~] D. The provisions of Section 60-6A-18 NMSA  
10 1978 shall not apply to restaurant licenses.

11 [~~D.~~] E. Nothing in this section shall prevent a  
12 restaurant licensee from receiving other licenses pursuant to  
13 the Liquor Control Act. "

14 Section 2. Section 60-7A-1 NMSA 1978 (being Laws 1981,  
15 Chapter 39, Section 47, as amended) is amended to read:

16 "60-7A-1. HOURS AND DAYS OF BUSINESS--SUNDAY SALES--  
17 CHRISTMAS DAY SALES--SUNDAY SALES FOR CONSUMPTION OFF THE  
18 LICENSED PREMISES--ELECTIONS.--

19 A. Alcoholic beverages shall be sold, served and  
20 consumed on licensed premises only during the following hours  
21 and days:

- 22 (1) on Mondays from 7:00 a.m. until midnight;
- 23 (2) on other weekdays from after midnight of  
24 the previous day until 2:00 a.m., then from 7:00 a.m. until  
25 midnight, except as provided in Subsections D and F of this

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1 section; and

2 (3) on Sundays only after midnight of the  
3 previous day until 2:00 a.m., except as provided in Subsections  
4 C and E of this section and Section 60-7A-2 NMSA 1978;  
5 provided, however, nothing in this section shall prohibit the  
6 consumption at any time of alcoholic beverages in guest rooms  
7 of hotels.

8 B. Alcoholic beverages shall be sold by a dispenser  
9 or a retailer in unbroken packages, for consumption off the  
10 licensed premises and not for resale, on Mondays through  
11 Saturdays from 7:00 a.m. until 12:00 a.m. on the following day,  
12 except as provided in Subsections D and F of this section.

13 C. A dispenser, restaurant licensee or club may,  
14 upon payment of an additional fee of one hundred dollars  
15 (\$100), obtain a permit to sell, serve or permit the  
16 consumption of alcoholic beverages by the drink on the licensed  
17 premises on Sundays from 12:00 noon until midnight and in those  
18 years when December 31 falls on a Sunday from 12:00 noon until  
19 2:00 a.m. of the following day, except as otherwise provided in  
20 Subsection E of this section. The permit shall expire on June  
21 30 of each year and may be renewed from year to year upon  
22 application for renewal and payment of the required fee. The  
23 permit fee shall not be prorated. Sales made pursuant to this  
24 subsection or Subsection G of this section shall be called  
25 "Sunday sales".

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1           D. Retailers, dispensers, canopy licensees that  
2 were replaced by dispenser's licensees pursuant to Section  
3 60-6B-16 NMSA 1978, restaurant licensees, club licensees and  
4 governmental licensees or their lessees shall not sell, serve,  
5 deliver or allow the consumption of alcoholic beverages on the  
6 licensed premises from 2:00 a. m. on Christmas day until 7:00  
7 a. m. on the day after Christmas, except as permitted pursuant  
8 to Subsection F of this section.

9           E. Sunday sales pursuant to the provisions of  
10 Subsection C of this section are permitted in a local option  
11 district that voted to permit them. If in that election a  
12 majority of the voters in a local option district voted "no" on  
13 the question "Shall Sunday sales of alcoholic beverages by the  
14 drink for consumption on the licensed premises of licensees be  
15 allowed in this local option district?", Sunday sales are  
16 unlawful in that local option district upon certification of  
17 the election returns unless the provisions of Subsection [J] ~~K~~  
18 of this section apply. The question shall not again be placed  
19 on the ballot in that local option district until:

20                   (1) at least one year has passed; and

21                   (2) a petition is filed with the local  
22 governing body bearing the signatures of registered qualified  
23 electors of the local option district equal in number to ten  
24 percent of the number of votes cast and counted in the local  
25 option district for governor in the last preceding general

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1 election in which a governor was elected. The signatures on  
2 the petition shall be verified by the clerk of the county in  
3 which the local option district is situated.

4 F. On and after July 1, 2002, dispensers, canopy  
5 licensees that were replaced by dispenser's licensees pursuant  
6 to Section 60-6B-16 NMSA 1978, restaurant licensees, club  
7 licensees and governmental licensees or lessees of these  
8 licensees; provided that the licensees have current, valid food  
9 service establishment permits, may sell, serve or allow the  
10 consumption of alcoholic beverages by the drink on licensed  
11 premises from noon until 10:00 p.m. on Christmas day, except in  
12 a local option district in which, pursuant to petition and  
13 election under this subsection, a majority of the voters voting  
14 on the question votes against continuing such sales or  
15 consumption on Christmas day. An election shall be held on the  
16 question of whether to continue to allow the sale, service or  
17 consumption of alcoholic beverages by the drink on licensed  
18 premises from noon until 10:00 p.m. on Christmas day in a local  
19 option district, if a petition requesting the governing body of  
20 that district to call the election is signed by at least ten  
21 percent of the registered voters of the district and is filed  
22 with the clerk of the governing body of the district. Upon  
23 verification by the clerk that the petition contains the  
24 required number of signatures of registered voters, the  
25 governing body shall adopt a resolution calling an election on

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1 the question of allowing the sale, service or consumption of  
2 alcoholic beverages by the drink on licensed premises from noon  
3 until 10:00 p.m. on Christmas day. The election shall be held  
4 within sixty days after the date the petition is verified, or  
5 it may be held in conjunction with a regular election of the  
6 governing body if that election occurs within sixty days of  
7 such verification. The election shall be called, conducted,  
8 counted and canvassed in substantially the same manner as  
9 provided for general elections in the county under the Election  
10 Code or for special municipal elections in a municipality under  
11 the Municipal Election Code. If a majority of the voters  
12 voting on the question votes against continuing the sale,  
13 service or consumption of alcoholic beverages by the drink on  
14 licensed premises from noon until 10:00 p.m. on Christmas day,  
15 then such sales and consumption shall be prohibited. If a  
16 majority of the voters voting on the question votes to allow  
17 continued sale, service and consumption of alcoholic beverages  
18 by the drink on licensed premises from noon until 10:00 p.m. on  
19 Christmas day, then such sales and consumption shall be allowed  
20 to continue. The question then shall not be submitted again to  
21 the voters within two years of the date of the last election on  
22 the question.

23 G. Notwithstanding the provisions of Subsection E  
24 of this section, any Indian tribe or pueblo whose lands are  
25 wholly situated within the state that has, by statute,

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1 ordinance or resolution, elected to permit the sale, possession  
2 or consumption of alcoholic beverages on lands within the  
3 territorial boundaries of the tribe or pueblo may, by statute,  
4 ordinance or resolution of the governing body of the Indian  
5 tribe or pueblo, permit Sunday sales by the drink on the  
6 licensed premises of licensees on lands within the territorial  
7 boundaries of the tribe or pueblo; provided that a certified  
8 copy of such enactment is filed with the office of the director  
9 and of the secretary of state.

10 H. Subject to the provisions of [~~Subsection I~~]  
11 Subsections I and J of this section, a dispenser or retailer,  
12 upon payment of an additional fee of one hundred dollars  
13 (\$100), may obtain a permit to sell alcoholic beverages in  
14 unbroken packages for consumption off the licensed premises on  
15 Sundays from 12:00 noon until midnight, and in those years when  
16 December 31 falls on a Sunday, from 12:00 noon on December 31  
17 until 2:00 a.m. of the following day. The permit shall expire  
18 on June 30 of each year and may be renewed from year to year  
19 upon application for renewal and payment of the required fee.  
20 The permit fee shall not be prorated. Sales made pursuant to  
21 the provisions of this subsection shall be called "Sunday  
22 package sales".

23 I. Except as provided in Subsection J of this  
24 section, if a petition requesting the governing body of a local  
25 option district to call an election on the question of

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1 continuing to allow sales of alcoholic beverages in unbroken  
2 packages for consumption off the licensed premises on Sundays  
3 is filed with the clerk of the governing body and that petition  
4 is signed by at least ten percent of the number of registered  
5 voters of the local option district and the clerk of the  
6 governing body verifies the petition signatures, the governing  
7 body shall adopt a resolution calling an election on the  
8 question. The election shall be held within sixty days of the  
9 date the petition is verified, or it may be held in conjunction  
10 with a regular election of the governing body, if the regular  
11 election occurs within sixty days of the petition verification.  
12 The election shall be called, conducted, counted and canvassed  
13 substantially in the manner provided by law for general  
14 elections within a county or special municipal elections within  
15 a municipality. If a majority of the voters of the local  
16 option district voting in the election votes to allow the sale  
17 of alcoholic beverages in unbroken packages for consumption off  
18 the licensed premises, then those sales shall continue to be  
19 allowed. If a majority of the voters of the local option  
20 district voting in the election votes not to allow the Sunday  
21 package sales, then those Sunday package sales shall be  
22 prohibited commencing the first Sunday after the results of the  
23 election are certified. Following the election, the question  
24 of allowing the Sunday package sales shall not be submitted  
25 again to the voters within two years of the date of the last

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1 election on the question.

2 J. Sunday sales of alcoholic beverages in unbroken  
3 packages for consumption off the licensed premises may be  
4 permitted in a local option district that has voted not to  
5 allow Sunday package sales if the governing body of the local  
6 option district grants a petition from a retailer or dispenser  
7 that sets forth the retailer's or dispenser's position why it  
8 should be allowed to make Sunday package sales notwithstanding  
9 that the local option district has voted not to allow Sunday  
10 package sales. If the governing body grants the petition, a  
11 copy of its ordinance, resolution or other pronouncement  
12 evidencing the grant shall be submitted to the director, and  
13 the retailer or dispenser may obtain a permit for Sunday  
14 package sales pursuant to Subsection H of this section.

15 [~~J.~~] K. Sunday sales of alcoholic beverages shall  
16 be permitted at resorts and at horse racetracks statewide  
17 pursuant to the provisions of Section 60-7A-2 NMSA 1978. "